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NO. 83606-0

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF

DAROLD R. J. STENSON,

Petitioner.

PETITIONER'S STATEMENT OF SUPPLEMENTAL AUTHORITY

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Attorneys for Petitioner, Darold R. J. Stenson

Pursuant to RAP 10.8, Sheryl Gordon McCloud, Peter Avenia and Robert Gombiner, counsel for Petitioner Darold Stenson, request that this Court consider the following, recently decided, Ninth Circuit decision applying *Brady*¹ and *Napue*² to the state's withholding of evidence impeaching the testimony of two witnesses in a death penalty *habeas corpus* case: *Sivak v. Hardison*, __ F.3d __ (9th Cir. 2011), 2011 U.S. App. LEXIS 18568 (September 7, 2011) (suppression of impeachment evidence, combined with failure to correct witnesses' erroneous testimony, warrants sentencing phase relief). The decision is relevant to Mr. Stenson's PRP issues of (1) the proper federal constitutional standard for reviewing *Napue* and *Brady* claims, including when they are raised together in the same case, *id.*, at **20-21, 30; and (2) how to decide whether *Napue* or

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

² *Napue v. Illinois*, 360 U.S. 265 (1959).

Brady errors are serious enough to warrant relief, *Id.*, at *30-31
(applying *Cone v. Bell*, 129 S.Ct. 1769, 1784 (2009)).

DATED this 14th day of September, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 14th day of September, 2011, a true and correct copy of the foregoing was served upon the following individuals via email:

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Rec. 9-14-11

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